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October 23, 2006

VIA HAND DELIVERY

Thomas L. Morrison
Deputy Executive Director
California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833

Re: CPVC Potable Water Pipe - Combined Notice of Proposed Action 2006
Annual Code Adoption Cycle, Tracks 8 & 10: Opposition to Proposed
Amendment of CPC §§ 604.1, 604.1.1 and 604.1.2

Dear Mr. Morrison:

The following comments are respectfully submitted on behalf of the Coalition for Safe Building Materials ("Coalition") in opposition to the proposed California Plumbing Code ("CPC") amendment that would authorize the statewide approval of Chlorinated Poly-Vinyl Chloride ("CPVC") drinking water pipe for all residential construction ("Project" or "CPVC Amendment"). The Coalition members include the California Pipe Trades Council, the California Professional Firefighters, the Sierra Club, the Planning and Conservation League, Communities for a Better Environment, the Consumer Federation of California, and Center for Environmental Health. The environmental, consumer, public health and labor organizations that make up the Coalition represent literally millions of Californians concerned about the safety of new building materials.

I. HCD PROPOSES TO AMEND CPC SECTIONS 604.1, 604.1.1, AND 604.1.2 TO ALLOW THE STATEWIDE APPROVAL OF CPVC

The Department of Housing and Community Development ("HCD") has proposed adoption of building standards that would amend the CPC to remove the restriction limiting the use of CPVC drinking water pipe to the few areas of the

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state where metallic pipe is proven to corrode prematurely due to water or soil conditions.¹ The specific HCD proposals are contained in the proposed amendment to CPC sections 604.1, 604.1.1, and 604.1.2.² These proposed regulations have been submitted to the California Building Standards Commission (“the Commission”) for review and public comment as required under the California Building Standards Law and the Administrative Procedure Act (“APA”).

Currently, CPC section 604.1.2 strictly limits the use of CPVC to where a finding has been made that metallic pipe has or “will” prematurely fail due to existing water or soil conditions. Furthermore, even where such a finding is made, the approval of CPVC by local building officials is discretionary, not mandatory. CPC section 604.1.2 and CPC Appendix I, sections 301.0.1.1 and 301.0.2.1, also impose flushing, ventilation, glove-use and inspection requirements where such limited approval is granted.

Under HCD’s proposed amendment, local building officials would be required to permit the use of CPVC in any residential building throughout the State of California. This represents a massive expansion in the approved use of CPVC and in potential CPVC installations. Industry estimates obtained from HCD demonstrate that the current limited approval has resulted in installation of CPVC in only *one to four percent* of the annual residential plumbing installations in California.³

¹ See CBSC, Combined Notice of Proposed Action 2006 Annual Code Adoption Cycle, Tracks 8 & 10, CCR, Title 24 (August 29, 2006); HCD, Proposed Express Terms 2006 UPC / 2007 CPC (Revised August 25, 2006); HCD, Initial Statement of Reasons, 2006 UPC / 2007 CPC (Revised August 28, 2006).

² HCD, Proposed Express Terms 2006 UPC / 2007 CPC (Revised August 25, 2006).

³ HCD’s “Addendum to Adopted Mitigated Negative Declaration State Clearinghouse No. 2000091089” states that 310,980 residential units were piped in 2004. (HCD, Addendum to Adopted Mitigated Negative Declaration State Clearinghouse No. 2000091089 (March 3, 2005) at p. 19.) A December 3, 2004 e-mail to HCD from a representative of Noveon, Inc., the company that holds the patents on CPVC, shows that an average of only 2,275 homes a year were piped with CPVC in California from 2000 to 2003 and that only 12,000 homes were piped with CPVC in California in 2004. (See Comments of Coalition for Safe Building Materials on the HCD CPVC DEIR (September 14, 2006), Appendix 20.) According to these numbers, the limited approval of CPVC currently permitted under the CPC applied to only one to four percent of residential units statewide.

II. THE COMMISSION SHOULD DISAPPROVE OR REQUIRE FURTHER STUDY OF THE PROPOSED CPVC AMENDMENT

The Coalition respectfully requests that the Commission disapprove the proposed CPVC amendment or, in the alternative, table the proposal pending further study. The proposed adoption of the CPVC amendment must be denied because HCD's environmental review of the Project is incomplete and fails to meet the requirements of the California Environmental Quality Act ("CEQA"). Furthermore, the proposed adoption of the CPVC amendment must be denied because the Notice of the Proposed Action⁴ ("the Notice") and the accompanying Proposed Express Terms⁵ ("Express Terms") and Initial Statement of Reasons⁶ ("ISOR") (collectively "the 2007 CPC Adoption Notice") fail to meet the notice and justification requirements of the APA and of Health and Safety Code sections 18929.1 and 18930.

III. THE 2006 CPVC DEIR MUST BE WITHDRAWN, REVISED AND RECIRCULATED PRIOR THE STATEWIDE APPROVAL OF CPVC

Prior to adopting the proposed CPVC amendment, HCD, as the lead agency, must first fully evaluate the Project's potential environmental and health and safety impacts in an environmental impact report ("EIR") that meets the requirements of CEQA. Every court that has considered the issue has held that CEQA compliance is required for approval of building standards that may result in environmental impacts require compliance with CEQA. For example, the court in the case *Building Code Action v. Energy Resources Conservation and Development Commission*, (1980) 102 Cal.App.3d 577, held that adoption of energy conservation regulations establishing double-glazing standards for new residential construction was subject to CEQA since it could result in a significant impact on air quality as a result of increased glass production.

Moreover, the courts have specifically required compliance with CEQA prior to approval of potentially hazardous plumbing systems and materials, including CPVC pipe itself. In 1997, the San Francisco Superior Court overturned a decision

⁴ CBSC, Combined Notice of Proposed Action 2006 Annual Code Adoption Cycle, Tracks 8 & 10, CCR, Title 24 (August 29, 2006).

⁵ HCD, Proposed Express Terms 2006 UPC / 2007 CPC (Revised August 25, 2006).

⁶ HCD, Initial Statement of Reasons, 2006 UPC / 2007 CPC (Revised August 28, 2006).
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of HCD and the Commission to propose and adopt the exact same statewide approval of CPVC that is at issue in this case due to a failure to comply with CEQA. (*Cuffe v. California Building Standards Commission* (1997) San Francisco Superior Court No. 977657 (Wm. Cahill, J.)). More recently in *Plastic Pipe and Fitting Association v. California Building Standards Commission (PPFA v. CBSC)*, the Court of Appeal held that environmental review under CEQA must be conducted prior to the approval of building code amendments that may have a significant impact on the environment. (*PPFA v. CBSC* (2004) 24 Cal.App.4th 1390.) The material at issue in that case was cross-linked polyethylene (“PEX”), another plastic drinking water pipe.

In July 2006, HCD prepared a draft EIR (“DEIR”) on the proposed CPVC amendment as the lead agency under CEQA. Public comment was taken on the DEIR from August 1, 2006 to September 14, 2006.

On September 14, 2006, the Coalition submitted comments and supporting appendices to HCD demonstrating that the 2006 CPVC DEIR fails to meet the requirements of CEQA and must be withdrawn, revised and recirculated for public comment prior to certification. A copy of the Coalition’s September 14, 2006 comments on the CPVC DEIR and supporting appendices accompany this letter. These comments and appendices are hereby incorporated by reference and made a part of the Coalition’s comments on the proposed CPVC amendment.

During the scoping period for the DEIR, we commended HCD for finally agreeing to complete an EIR for the Project. We stated that we hoped the document would address the concerns that we have raised during past proceedings, fully evaluate and disclose the Project’s potential impacts, and be an open, impartial decisionmaking document based on real science. As fully briefed in the accompanying comments, the DEIR fails in all of these respects.

The gross inadequacy of the DEIR is both baffling and frustrating. Last year the Coalition and numerous other interested parties provided HCD with extensive comments and over seven volumes of evidence that needed to be evaluated in an EIR. The DEIR simply ignores this evidence as if it didn’t exist. HCD continues to resist a meaningful analysis of the issues that have been identified and presented to the Department in exhausting detail during past proceedings.

Our scoping comments referred HCD to these past submittals. Our scoping letter and the comments submitted to HCD during the 2005 proceedings describe in detail the impacts that were of greatest concern. These impacts included: drinking water contamination; worker exposure to toxic solvents; increased air emissions; manufacturing impacts; solid waste impacts; increased fire hazards; aquatic toxicity; and premature pipe failure.

The DEIR, however, limits its analysis almost entirely to air quality impacts. The DEIR's air quality analysis, while deeply flawed, admits that the Project will result in increased ozone pollution throughout California.

The DEIR's evaluation of all other impacts is either cursory or nonexistent. The DEIR's evaluation of drinking water contamination, worker exposure to toxic solvents, and solid waste impacts is perfunctory, focuses on irrelevant issues and entirely ignores the evidence and comments that had been submitted on this issue. The DEIR contains no discussion, whatsoever, of manufacturing impacts, fire hazard impacts, aquatic toxicity impacts or the environmental impacts that would be associated with premature pipe failure.

HCD's failure to evaluate objectively the health, safety and environmental impacts of its proposal renders the DEIR legally inadequate. As discussed in detail in the accompanying comments, the DEIR's evaluation of the project fails to meet the minimum standards of CEQA. Aside from its air quality analysis, which contains numerous errors and grossly understates the potential impacts, the DEIR's analysis of potential impacts is completely devoid of any quantification, empirical analysis or factual examination. The document fails to provide substantial evidence to support its findings regarding potential environmental effects and lacks foundation for its ultimate conclusions.

The evidence in the record, along with the expert comments and studies attached to the Coalition's September 14, 2006 CPVC DEIR comment letter, overwhelmingly demonstrate that the proposed statewide approval of CPVC may have significant effects on the environment that have not been adequately disclosed or evaluated in the DEIR. These impacts include:

- **Air Quality Impacts**

- o Widespread use of CPVC solvents and cements will result in Volatile Organic Compound (“VOC”) emissions in exceedance of standards of significance.
- o The DEIR’s analysis substantially understates the scope of the Project’s air quality impacts.

- **Worker Health & Safety Impacts**

- o 1989 Department of Health Services Study concluded that workers installing CPVC pipe were regularly exposed to toxic chemicals such as tetrahydrofuran (“THF”), methyl ethyl ketone (“MEK”), cyclohexanone (“CHX”) and acetone (“ACE”) at levels exceeding established workplace standards.
- o Worker exposure occurs through inhalation and dermal absorption.
- o Most gloves offer no protection against dermal absorption of any of these chemicals. The use of gloves may actually make the problem worse.
- o Ventilation and glove-use requirements will not reduce these risks below a level of significance.
- o Recent studies have determined that where CPVC has been approved on a limited basis, enforcement and implementation of ventilation and glove-use requirements has been virtually non-existent.

- **Contamination of drinking water**

- o CPVC pipe leaches chemicals such as THF, MEK, ACE, CHX and organotins (including tributyltin) into drinking water.
- o Proposed flushing mitigation is inadequate and unenforceable.
- o The public is exposed through consumption and through inhalation and skin exposure during bathing.
- o Aquatic toxicity concerns – organotins (and particularly tributyltin) are toxic to many aquatic animals. Most water treatment plants leave significant amounts of organotins in the effluent discharged into receiving waters.

- **Manufacturing Impacts**

- o CPVC pipe, fittings, cements and solvents are manufactured in California.
- o Increased manufacturing of these products will result in significant air quality and worker health and safety impacts.
- o The manufacture of CPVC pipe and fittings results in the release of dioxins and other highly toxic chemicals.

- **Solid Waste Impacts**

- o CPVC pipe is extremely difficult to recycle and is considered a “contaminant” in the waste stream.
- o Copper piping is completely recyclable.

- **Fire Hazard Impacts**

- o CPVC pipe releases dioxins and toxic smoke when burned.
- o CPVC pipe makes residential fires, plastic incinerators and landfill fires significantly more dangerous.

The DEIR is further deficient because it fails to include an evaluation of the proposed amendments to the CPC to allow the use of PEX and PEX-AL-PEX potable water pipe and to allow the expanded use of ABS and PVC drain, waste and vent (“DWV”) pipe. The failure to evaluate these plastic pipe proposals in a single environmental document improperly piecemeals these projects, making each proposal appear less significant.

CEQA mandates “that environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences.”⁷ Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project.⁸ A public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences.

⁷ *Bozung v. LAFCO*, (1975) 13 Cal.3d 263, 283-84; *City of Santee v. County of San Diego*, (1989) 214 Cal.App.3d 1438, 1452.

⁸ *Laurel Heights Improvement Assn. v. Regents of University of California*, (1988) 47 Cal.3d 376, 396-97 (EIR held inadequate for failure to assess impacts of second phase of pharmacy school’s occupancy of a new medical research facility).

HCD has proposed revisions to the California Plumbing Code that would expand the approved use of PVC and ABS DWV plumbing pipe.⁹ HCD, the Division of the State Architect and the Commission have also proposed revisions to the California Plumbing Code that would approve the use of PEX and PEX-AL-PEX potable water pipe.¹⁰ The DEIR, however, fails to disclose or evaluate these concurrent proposals to expand the approved use of plastic plumbing pipes in the CPC.

The proposed CPVC amendments, PEX and PEX-AL-PEX amendments and PVC and ABS DWV pipe amendments are sufficiently connected and related that their impacts must be examined together, rather than in separate documents. The proposed CPVC, PVC, ABS, PEX and PEX-AL-PEX plastic plumbing pipe amendments are all part of the same 2007 CPC regulatory action. They each address what plumbing pipe materials shall be allowed for use within buildings in the State of California. Moreover, the proposed regulations would potentially allow these materials to be installed in the same buildings at the same time.

In addition, the potential impacts associated with the installation of CPVC, PVC, ABS, PEX and PEX-AL-PEX plumbing pipes significantly increase in scope and severity when considered jointly. CPVC, ABS and PVC are all installed using solvents that contain toxic and ozone-forming chemicals. The expanded use of these solvents may have cumulatively significant impacts on air quality and worker health and safety. PEX, PEX-AL-PEX, CPVC, PVC and ABS pipe may also contribute jointly to increased fire hazards and solid waste impacts. Dividing environmental review of these materials into three separate environmental documents makes the impacts from each regulatory change appear less significant, thus improperly piecemealing these projects.¹¹

HCD has previously determined that the amendment of the CPC to permit the use of multiple new plastic plumbing materials required the preparation of a single, combined EIR. In 1982, HCD released an Initial Study that determined that

⁹ See HCD, Proposed Express Terms 2006 UPC / 2007 CPC (Revised August 25, 2006), proposed revisions to California Plumbing Code sections 701.1.2.2, 903.1.2.2, 1101.3.1, 1101.3.3 and 1102.1.2.

¹⁰ See proposed revisions to CPC §§ 604.1, 604.1.1, 604.11, 604.11.1, 604.11.2, 604.13, 604.13.1, 604.13.2 and Table 6-4 contained in: HCD, Proposed Express Terms 2006 UPC / 2007 CPC (Revised August 25, 2006) ; DSA-SS, Express Terms, California Plumbing Code, 2007 Edition (Title 24, Part 5) (8/29/2006); CBSC, Express Terms, Adoption of 2006 UPC (9/01/2006).

¹¹ *Citizens Ass'n for Sensible Devel. of Bishop Area v. Inyo*, (1985) 172 Cal.App.3d 151, 165-166. 1626-169a

the proposed approval of CPVC and polybutylene (“PB”) plastic potable water pipe and PVC and ABS DWV pipe required the preparation of an EIR.¹² A single, draft EIR on all four of these products was prepared in 1989. (The draft EIR, however, was abandoned prior to completion – leaving a number of issues raised, but not fully addressed.)¹³

HCD now proposes to approve PEX, PEX-AL-PEX, CPVC, PVC and ABS plastic plumbing pipes all as part of the same 2007 CPC regulatory packet. The failure to evaluate the proposed approval of these materials in a single, combined environmental review improperly piecemeals these projects. An adequate EIR for this Project must evaluate the potential environmental, health and safety impacts from all of these proposed regulations in a single combined environmental document.

The DEIR must be withdrawn and revised to evaluate these deficiencies. It must then be recirculated for public review and comment. Until a legally adequate EIR is certified, the Commission may not adopt the proposed CPVC amendments.

IV. THE 2007 CPC ADOPTION NOTICE IS PROCEDURALLY DEFECTIVE BECAUSE IT FAILS TO INCLUDE HCD’S JUSTIFICATION UNDER THE NINE-POINT CRITERIA OF SECTION 18930

The California Building Standards Law requires all building standards submitted to the Commission for approval to be accompanied by an analysis written by the proposing agency, which shall justify the approval in terms of the nine-point criteria listed in Health and Safety Code section 18930. The nine-point criteria required under Section 18930 to justify proposed building standards are as follows:

- “(1) The proposed building standards do not conflict with, overlap, or duplicate other building standards.

¹² 1982 HCD Plastic Pipe Initial Study; See Comments of Coalition for Safe Building Materials on the HCD CPVC DEIR (September 14, 2006), Appendix 20.), Appendix 5.

¹³ See Comments of Coalition for Safe Building Materials on the HCD CPVC DEIR (September 14, 2006), Appendix 20.), Appendices 8, 9 & 10.

- (2) The proposed building standard is within the parameters established by enabling legislation and is not expressly within the exclusive jurisdiction of another agency.
- (3) The public interest requires the adoption of the building standards.
- (4) The proposed building standard is not unreasonable, arbitrary, unfair, or capricious, in whole or in part.
- (5) The cost to the public is reasonable, based on the overall benefit to be derived from the building standards.
- (6) The proposed building standard is not unnecessarily ambiguous or vague, in whole or in part.
- (7) The applicable national specifications, published standards, and model codes have been incorporated therein as provided in this part, where appropriate.
 - (A) If a national specification, published standard, or model code does not adequately address the goals of the state agency, a statement defining the inadequacy shall accompany the proposed building standard when submitted to the commission.
 - (B) If there is no national specification, published standard, or model code that is relevant to the proposed building standard, the state agency shall prepare a statement informing the commission and submit that statement with the proposed building standard.
- (8) The format of the proposed building standard is consistent with that adopted by the commission.
- (9) The proposed building standard, if it promotes fire and panic safety, as determined by the State Fire Marshal, has the written approval of the State Fire Marshal.”

Health and Safety Code section 18929.1 requires that written notice of this nine-point justification be provided to the public for review and comment prior to its submittal to the Commission. Section 18929.1 requires that the proposing agencies provide for “[a]dequate public participation in the development of building standards prior to the submittal to the commission for adoption and approval.” Section 18929.1 further requires “[a]dequate notice, in written form, to the public of the compiled building standards *and their justification*.” (Emphasis provided.) Finally, Section 18929.1 requires the procedures for public review to “meet the intent of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code) *and Section 18930*.” (Emphasis provided.)

Section 18929.1’s requirement to provide the public written notice of the “justification” for the proposed building standards clearly refers to justification under the nine-point criteria of Section 18930. First, Section 18930’s requirement that building standards be justified under the nine-point criteria is the only “justification” provided for in the California Building Standards Law. Second, Section 18929.1 requires the procedures for public review to meet the intent of Section 18930, thus underscoring that this section must be consulted when justifying proposed standards to the public.

The 2007 CPC Adoption Notice, however, fails to provide to the public written notice of HCD’s justification for the proposed standards under the nine-point criteria analysis. Accordingly, the public has not been provided the notice and opportunity for public comment required by Section 18929.1.

This procedural defect represents a substantial failure to comply with the notice requirements of Section 18929.1 because it prevents the public from having an opportunity to review and comment on HCD’s analysis of the nine-point criteria “prior to submittal to the commission for adoption and approval.” Under the Commission’s regulations, no new issues may be raised before the Commission that were not raised during the public comment period on the 2007 CPC Adoption Notice.¹⁴ Accordingly, the failure to include the nine-point criteria justification in the 2007 CPC Adoption Notice effectively precludes the public from critically analyzing HCD’s justification for its proposed building standards.

¹⁴ Cal. Code Regs., tit. 24, part 1, §1-901(d)(4).
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The 2007 CPC Adoption Notice does include an ISOR by HCD as required by the APA under Government Code section 11346.2. The ISOR, however, is not equivalent to the justification under the nine-point criteria analysis required by Section 18930. The required elements of the ISOR substantially differ from the nine-point criteria listed in Section 18930. For example, unlike Section 18930, the APA does not require the ISOR to make written determinations that adoption of a proposed regulation is required by “the public interest,” that adoption of a proposed regulation “is not unreasonable, arbitrary, unfair, or capricious, in whole or in part,” or “that the applicable national specifications, published standards, and model codes have been incorporated . . . where appropriate.”¹⁵

The APA does not limit the ISOR to the elements listed in Government Code section 11346.2, so there is no bar to including the nine-point criteria analysis in the justification.¹⁶ In other words, the ISOR contained in the 2007 CPC Adoption Notice could have been constructed to meet the intent of both the APA and Health and Safety Code section 18930, as required under Section 18929.1. The HCD ISOR contained in the 2007 CPC Adoption Notice, however, is limited to the bare elements required under Government Code section 11346.2 and fails to include its justification in terms of the Section 18930 criteria. This failure violates the notice requirements of Section 18929.1.

Regulations that substantially fail to comply with notice requirements are invalid.¹⁷ The 2007 CPC Adoption Notice must be revised and re-circulated with a copy of the HCD’s nine-point analysis to correct this error.

V. THE PROPOSED STATEWIDE APPROVAL OF CPVC FAILS TO MEET AT LEAST TWO OF THE NINE-POINT CRITERIA

Before the Commission may adopt a proposed building standard, it must be satisfied that HCD has adequately justified adoption under the nine-point criteria analysis of Health and Safety Code section 18930. The proposed statewide approval of CPVC, however, fails to meet at least two of the nine-point criteria. Accordingly,

¹⁵ Gov. Code § 11346.2; see also Health & Saf. Code § 18930.

¹⁶ Gov. Code § 11346.2, subd. (b) (“statement of reasons shall include, but not be limited to, all of the following . . .”).

¹⁷ See Gov. Code § 11350.

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the Commission may not find that the proposed CPVC amendment is justified under the Section 18930 criteria.

Section 18930 requires findings under the nine-point criteria to be supported by substantial evidence. If the Commission determines that a factual finding is arbitrary or capricious or lacks substantial evidence, it shall return the standard back to the proposing agency for reexamination.¹⁸

In the case at hand, there is substantial evidence that adopting the proposed statewide approval of CPVC, without first preparing an EIR, would be contrary to the public interest and would be unreasonable, arbitrary and unfair. Furthermore, the record lacks substantial evidence to support a contrary finding. Accordingly, the proposed statewide approval of CPVC lacks justification under at least two elements of the nine-point criteria.

A. Approval of CPVC Without First Preparing an EIR Would Not Be In the Public Interest

Adoption of the proposed CPVC amendment without first preparing an EIR would not meet the “public interest” element of the nine-point criteria. Health and Safety Code section 18930, subdivision (3), requires agencies to determine if the “public interest requires the adoption of the building standards.” In the case at hand, adopting the proposed statewide approval of CPVC, without first preparing an EIR, would violate the requirements of CEQA. Such deliberate violation of the law would, in itself, be contrary to the public interest. The statewide approval of CPVC would also be contrary to the public interest due to the numerous significant environmental and public health and safety impacts associated with these products.

It is well settled that compliance with CEQA is in the public interest.¹⁹ CEQA “protects not only the environment but also informed self-government.”²⁰ CEQA informs the public and its responsible officials of the environmental consequences of their decisions before they are made, ensuring consideration of alternatives and requiring imposition of reasonable mitigation measures.²¹

¹⁸ Health & Saf. Code § 18930, subd. (d) (1).

¹⁹ See *Kane v. Redevelopment Agency of City of Hidden Hills* (1986) 179 Cal.App.3d 899, 905; *People By and Through Dept. of Public Works v. Bosio* (1975) 47 Cal.App.3d 495, 526; see also Pub. Resources Code § 21000.

²⁰ *Communities for a Better Environment v. Calif. Resources Agency*, (2002) 103 Cal.App.4th 98, 108.

²¹ *Id.*; Pub. Resources Code §§ 21063 & 21100.
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As discussed in detail in the attached comments, reliance on HCD's inadequate CPVC DEIR would violate CEQA. The CPVC DEIR fails to fully disclose, evaluate or mitigate potential impacts and violates numerous other requirements of CEQA. As a result, reliance upon the CPVC DEIR to support the statewide approval of CPVC would be contrary to the public's interest in ensuring informed self-government and in protecting public health and safety and the environment.

The evidence in the record, including the expert comments and studies accompanying this letter, overwhelmingly demonstrate that the proposed statewide approval of CPVC may have a significant effect on the environment, even with the continuation of the ventilation, glove-use and flushing requirements currently required by the CPC. As discussed in greater detail in the attached comments and exhibits, these impacts include: (1) worker exposure to toxic chemicals at levels exceeding established workplace standards; (2) contamination of drinking water from chemicals leached from the CPVC pipe and solvents; (3) air quality impacts from CPVC solvent emissions; (4) manufacturing impacts; (5) increased solid waste disposal impacts; and (6) increased risk of fire hazard from toxic smoke and fire spread.

Approval of CPVC without full disclosure, evaluation and mitigation of these impacts would not be in the public interest. Accordingly, adoption of the CPVC amendment may not be justified under the nine-point criteria.

B. Statewide Approval of CPVC Without First Preparing an EIR Would Be Unreasonable, Arbitrary and Unfair

Health and Safety Code section 18930, subdivision (4), requires agencies to justify their proposed building standards on the grounds that the proposed standard "is not unreasonable, arbitrary, unfair, or capricious, in whole or in part." In the case at hand, it is manifestly unreasonable, arbitrary and unfair to propose the adoption of building standards in a manner contrary to law. As discussed in detail in the attached comments, allowing the statewide approval of CPVC based upon the inadequate analysis contained in the CPVC DEIR is a clear violation of CEQA. Such approval may not be justified under the nine-point criteria.

Furthermore, the proposed statewide approval of CPVC is unfair and unreasonable due to the substantial evidence of potential significant impacts associated with this expanded approval. Approval of a building material without

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first requiring full disclosure, evaluation and mitigation of its potential impacts is unfair to the public. Moreover, a proposal by an agency to have a potentially hazardous building material approved without such disclosure, evaluation and mitigation is unreasonable.

VI. CONCLUSION

The comments, expert reports, studies and other evidence submitted to HCD and resubmitted herein to the Commission demonstrate that approval of the proposed CPC amendment allowing the statewide use of CPVC may result in numerous significant impacts on public health and the environment. Such impacts include contamination of drinking water, worker exposure to toxic solvents, increased air emissions, manufacturing impacts, solid waste impacts and increased fire hazards.

The evidence submitted further demonstrates that the CPVC DEIR fails to adequately evaluate and mitigate these impacts. As a result, approval of the CPVC amendment would be contrary to the public interest. Full compliance with CEQA is necessary to fully disclose the extent of these potential impacts and to consider alternative pipe materials and mitigation measures.

The Commission must also correct the procedural errors of the 2007 CPC Adoption Notice to meet the notice and justification requirements of the APA and of Health and Safety Code section 18929.1.

The Coalition respectfully requests that the Commission deny HCD's proposal to amend the CPC to expand the approved use of CPVC to all residential units in the state. Thank you for your consideration of this letter and the enclosed comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Thomas A. Enslow", with a long horizontal line extending to the right.

Thomas A. Enslow

TAE:bh
Enclosures